

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 6, 2000

IN RE:

GENERIC DOCKET TO ESTABLISH UNE PRICES)
FOR LINE SHARING PER FCC 99-355, AND RISER)
CABLE AND TERMINATING WIRE AS ORDERED)
IN TRA DOCKET 98-00123)

DOCKET NO.
00-00544

ORDER OVERRULING *BELLSOUTH'S OBJECTIONS TO COVAD'S
SECOND SET OF INTERROGATORIES AND
SECOND REQUEST FOR PRODUCTION OF DOCUMENTS*

This matter came before the Pre-Hearing Officer upon *BellSouth's Objections To Covad's Second Set of Interrogatories and Second Request for Production of Documents* ("Objections") filed by BellSouth Telecommunications, Inc. ("BellSouth") on October 18, 2000.

On October 13, 2000, DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") filed *Covad Communications Company's Second Set of Interrogatories and Second Request for Production of Documents to BellSouth Telecommunications, Inc.*¹ BellSouth filed its Objections five days later on October 18, 2000. BellSouth's Objections include both general and specific complaints. BellSouth's general objections are: 1) the number of discovery requests exceeds the number permitted by Rule 1220-1-2-.11(5)(a); 2) the definitions and instructions impose an obligation on BellSouth in excess of the obligation established by the Tennessee Rules of Civil Procedure; 3) the definition of BellSouth is overly broad.² BellSouth

¹ Covad filed its first set of interrogatories and requests for production to BellSouth on October 4, 2000. The first set contains thirty-four (34) interrogatories and seven (7) requests for production. There are two (2) subparts in request number 22, there are three (3) requests numbered 24, and there are two requests numbered 6.

POSTED
11/6/00

specifically objected to requests number fifteen (15) through twenty-five (25). As to each of these requests, BellSouth stated:

BellSouth objects to this request on the grounds that it is overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. BellSouth further objects to this request on the ground that it seeks information which is not relevant to any of the issues pending in this docket.

On October 31, 2000, the Data Coalition² filed *The Data Coalition's Response to BellSouth's Objections to Covad's Second Interrogatories and Second Request for Production of Documents to BellSouth Telecommunications, Inc.* ("Response"). The Data Coalition filed a revised response on November 2, 2000 due to the fact that it had inadvertently included the wrong attachment with its initial Response. The Data Coalition argued that BellSouth's objections should be denied or, in the alternative, that Broadslate and Vectris should be permitted to late file discovery requests. The Data Coalition contended that the requests are necessary because reliance on discovery from other states is insufficient and eleven of the requests apply specifically to Tennessee. The Data Coalition also stated that, due to a clerical error, the data requests were propounded on behalf of Covad rather than the Data Coalition. Further, the Data Coalition argued that it is entitled to propound one hundred and twenty (120) data requests because Rule 1220-1-2-.11(5)(a) allows each party to proffer forty (40) data requests and three parties make-up the Data Coalition. Finally, the Data Coalition attached to its revised Response a revised version of its previously filed discovery requests. The Data Coalition stated that it revised the requests such that it eliminated sixteen (16) interrogatories, reduced the scope of the remaining interrogatories, and eliminated one (1) request for production of

² The Data Coalition includes DIECA Communications, d/b/a Covad Communications, Broadslate Networks of Tennessee, Inc. ("Broadslate"), and Vectris Telecom, Inc ("Vectris").

documents. In addition, the revised request is proffered on behalf of Broadslate rather than Covad.

Based on the Objections, Response and revisions thereto, and the record in this matter, the Pre-Hearing Officer makes the following findings and conclusions.

1) The Pre-Hearing Officer entered an Order in this docket on August 10, 2000. The Order contained a detailed procedural schedule that included dates for the issuance of discovery requests and responses thereto. The Order stated:

- Discovery requests shall be filed with the Authority and served on all parties no later than **4:30 p.m., Friday, October 13, 2000**. All Discovery Requests shall be served by hand-delivery or facsimile on the date of filing.
- Responses to Discovery shall be filed with the Authority and served on all parties on or before the tenth (10th) day following the filing of the Discovery Requests.

2) Rule 1220-1-2-.11(5)(a) of the Rules of Practice and Procedure of the Rules of the Tennessee Regulatory Authority became effective on September 13, 2000. Pursuant to this Rule, each party may file up to forty (40) discovery requests without obtaining the permission of the Authority or Pre-Hearing Officer. The Data Coalition is comprised of three parties: Broadslate, Vectris, and Covad; therefore, were each party to file the maximum number of discovery requests, BellSouth would have to respond to one hundred and twenty (120) discovery requests.

With the exceptions of the first and second set of data requests, the above three parties have acted jointly as the Data Coalition since the setting of the procedural schedule. Either Broadslate or Vectris could have filed the data requests filed as Covad's second set and not been accused of exceeding the limitation contained in Rule 1220-1-2-.11(5)(a) because neither have filed any discovery requests to date. It is the finding of the Pre-Hearing Officer that BellSouth's

contentions in regard to the forty (40) request limitation, while technically correct, should not have the effect of frustrating discovery that would have been proper absent a clerical error.

3) BellSouth's objections to the definitions and instruction are so noted, but these objections do not eliminate the need for BellSouth to respond to the discovery requests.

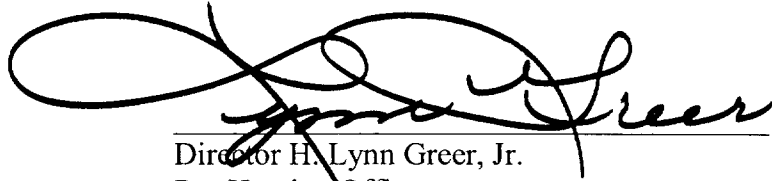
4) As to BellSouth's specific objections, it is the finding of the Pre-Hearing Officer that the information requested is likely to lead to evidence that is relevant to the controversies in this docket. The Pre-Hearing Officer also finds that the revised discovery requests are not unduly burdensome or overly broad. The revised requests are specific and limited in their scope to the near past.

IT IS THEREFORE ORDERED THAT:

1) *BellSouth's Objections To Covad's Second Set of Interrogatories and Second Request for Production of Documents* filed by BellSouth Telecommunications, Inc. on October 18, 2000 are overruled such that BellSouth Telecommunications, Inc. shall respond to the revised discovery requests attached to the Data Coalition's revised Response no later than **Thursday, November 9, 2000 at 2:00 p.m.**


2) The procedural schedule set forth in the August 10, 2000 Order is hereby modified such that: Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **12:00 p.m., Monday, November 13, 2000** and Rebuttal to Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **2:00 p.m., Monday, November 20, 2000**. All other dates shall remain as previously scheduled.

3) Any party aggrieved by this Order may file a Petition for Reconsideration to be heard by the Pre-Hearing Officer pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.

A large, stylized handwritten signature in black ink, appearing to read "H. Lynn Greer, Jr.", written over a horizontal line.

Director H. Lynn Greer, Jr.
Pre-Hearing Officer

ATTEST:

A handwritten signature in black ink, appearing to read "K. David Waddell", written over a horizontal line.
K. David Waddell, Executive Secretary